

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6968 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANGABHAI BALUBHAI PATEL

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/05/98

ORAL JUDGEMENT

Rule. Mr. Lakhani, learned advocate appearing for the respondent Corporation waives service of rule. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. The petitioner-workman has filed this petition

challenging the order dated 29th January, 1996 passed by the Labour Court, Surat in Reference (LCS) No. 161/94. The Labour Court, by the said order, rejected the reference made by the petitioner.

3. The petitioner, at the relevant time, was serving as a conductor in the respondent Corporation at Surat Rural. The petitioner was transferred to Olpad and was required to report for duty on 7.7.1993. However, without obtaining any prior leave, he has remained absent. The petitioner was served with the show cause notice dated 10th January, 1994. The petitioner was served with the chargesheet wherein it was alleged that the petitioner has unauthorisedly remained absent from duty from 7.7.93 to 9.9.93. It appears that the petitioner had also not remained present in the inquiry proceedings. Therefore, the petitioner was dismissed from service after the completion of the inquiry proceedings on 25th January, 1995. The petitioner had challenged the said order of dismissal from service by filing above referred reference before the labour court. However the labour court has rejected the reference. Hence this petition.

3. It is the case of the petitioner that the petitioner has completed 17 years' service as conductor. The petitioner remained absent from 7.7.93 to 9.9.93 as his conductor's licence was lost by the RTO Agent and the petitioner informed the same at Olpad Depot. It is the further case of the petitioner that the petitioner had in fact reported for duty on 20.9.1993 and worked till 25th January, 1994. However, he had fallen sick from 26th September, 1993 and was taken to Navsari for treatment which continued upto 6th November, 1993. The petitioner had reported for duty on 25th January, 1993 when he was dismissed from service. According to the petitioner, he has produced medical certificate and the prescription papers. However, same was ignored by the competent authority as also labour court while deciding his reference. The petitioner has in fact produced medical prescription dated 26th September, 1993 to 3.11.1993 alongwith this petition with a view to substantiating his statement. The labour Court considering the facts of the case, was of the view that as there are 34 default cases registered against the petitioner, and that the petitioner had remained absent without any justifiable cause, no interference is called for in the order of dismissal passed by the competent authority. In my view, punishment of dismissal imposed upon the petitioner appears to be quite disproportionate to the proved misconduct of remaining absent without leave. The petitioner though produced medical prescriptions in order

to justify his absence from duty before this court, eventhough it is not required to be considered but at the same time, it cannot be ignored. The labour court could have exercised the powers vested in it under section 11(A) of the Industrial Disputes Act, 1947, considering the proved misconduct of remaining absent in favour of the petitioner. The learned advocates appearing for the respective parties has stated before this court that this Court, even at this stage, can exercise the powers under sec. 11 (A) of the Industrial Disputes Act. The Supreme Court in the matter of Workmen of Bharat Fritz Werner Pvt. Ltd. Versus Bharat Fritz Werner Pvt. Ltd. and another [JT 1990(1) SC 305]has ruled that the High Court can consider what would be the adequate punishment for proved misconduct while exercising the powers under sec. 11(A) of the Industrial Disputes Act, if it is requested by the parties to decide the matter without remitting it to the Tribunal. In view of this, I am of the view that in the facts and circumstances of the case, case of the petitioner is required to be dealt with sympathetically keeping in view his past service of 17 years. It is true that as many as 34 default cases have been registered against the petitioner but those by themselves are not the grounds for dismissing the petitioner as in the present case, charge levelled against the petitioner is with respect to remaining absent.

In the result, the petition is allowed. Order of dismissal dated 25th January, 1994 passed against the petitioner (Annexure "B" to the petition) and the order dated 29th January, 1996 passed by the Presiding Officer, Labour Court, Surat in Reference (LCS) No. 161/94 both are quashed and set aside. The petitioner is ordered to be reinstated in service with continuity of service without any back wages. However, since the misconduct of remaining absent is established against the petitioner, petitioner is accordingly penalized by the punishment of stoppage of two increments with future effect. The respondent Corporation is directed to reinstate the petitioner in service within six weeks from the date of receipt of this order. Rule is accordingly made absolute with no order as to costs.

Vyas